FEDERAL ELECTION COMMISSION
WASHINGTON, D C 20463

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APR - 9 2007

RE: MURs 5779 and 5805
City of Santa Clarita

Dear Mr. Newton:

In August of 2006, the Federal Election Commission notified your client of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended. In September of 2006, the Federal Election Commission notified your client of a second complaint alleging similar violations. On March 30, 2007, the Commission found, on the basis of the information in the complaints and information provided by your responses to the complaints, that there is no reason to believe that the City of Santa Clarita violated 2 U.S.C. §§ 441b or 433. Accordingly, the Commission closed its file in this matter.

Documents related to the case will be placed on the public record within 30 days. *See* Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003). The Factual and Legal Analysis, which more fully explains the Commission's finding, is enclosed for your information.

If you have any questions, please contact Wanda D. Brown, the attorney assigned to this matter at (202) 694-1650.

Sincerely,

Thomaseina P. Duncan
Acting General Counsel

BY: Rhonda J. Vosdingh
Associate General Counsel
for Enforcement

Enclosure
Factual and Legal Analysis

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENT: City of Santa Clarita **MURs:** 5779 and 5805

I. GENERATION OF MATTER

These matters were generated by complaints filed with the Federal Election Commission by Bruce McFarland and Eddy Shalom. *See* 2 U.S.C. § 437g(a)(1).

II. INTRODUCTION

The City of Santa Clarita (the "City"), a corporate entity in the State of California[1], created and paid for fourteen large banners reading "Thank you Buck for H.R. 5471! – No Mega Mining in Soledad Canyon." The banners were displayed throughout the city from July 1, 2006 to July 31, 2006. Read broadly, the complaints in these matters alleged that the banners were contributions to, or at least advocated, the re-election campaign of H.R. 5471's sponsor, Representative Howard P. "Buck" McKeon. Because the banners did not expressly advocate Rep. McKeon's re-election, and because there is no evidence they were coordinated communications, there is no reason to believe that the City of Santa Clarita violated 2 U.S.C. § 441b.

III. FACTUAL AND LEGAL ANALYSIS

Soledad Canyon is near the City of Santa Clarita. The Federal Bureau of Land Management granted a 20-year contract to Cemex, Inc., allowing the company to extract sand and gravel from the canyon. Rep. McKeon introduced H.R. 5471 on May 24, 2006.

[1] According to its website, the City of Santa Clarita was incorporated in 1987.

The bill would have limited mining in the canyon and revoked the mining rights granted to Cemex, Inc. The bill was not enacted.

The City, in response to complaints, argued that the banners were part of an ongoing attempt to halt mining in the canyon and were an effort to thank Rep. McKeon for introducing the legislation mentioned on the banners.

A liberal interpretation of both complaints suggests that the Complainants alleged that the City violated the Federal Election Campaign Act of 1971, as amended (the "Act") by making what might appear to be an independent expenditure on behalf of a Federal candidate, or that the City coordinated this communication with the Federal candidate, also a violation of the Act.

A. The Banners were not Independent Expenditures

Pursuant to the Act, an "independent expenditure" is an expenditure by a person expressly advocating the election or defeat of a clearly identified person that is not made in concert or cooperation with, or at the suggestion of, the clearly identified candidate, the candidate's authorized political committee, or their agents, or a political party committee and its agents. 2 U.S.C. § 431(17); *see* 11 C.F.R. § 100.16(a). The Act generally prohibits any corporation from making an expenditure in connection with any election to any political office. 2 U.S.C. § 441b(a).

The Commission's regulations define express advocacy at 11 C.F.R. § 100.22. The first part of the regulation defines "expressly advocating" as a communication that uses phrases such as "vote for the President," or "'support the Democratic nominee' . . . , or individual word(s), which in context can have no other reasonable meaning than to urge the election or defeat of one or more clearly identified candidate(s), such as posters,

bumper stickers, advertisements, etc. which say 'Nixon's the One,' 'Carter '76,' 'Reagan/Bush' or 'Mondale!'" 11 C.F.R. § 100.22(a). The second part of this regulation encompasses a communication that, when taken as a whole or with limited reference to external events, "could only be interpreted by a reasonable person as containing advocacy of the election or defeat of one or more clearly identified candidate(s) because" it contains an "electoral portion" that is "unmistakable, unambiguous, and suggestive of only one meaning," and one as to which "reasonable minds could not differ as to whether it encourages actions to elect or defeat one or more clearly identified candidate(s) or encourages some other kind of action." 11 C.F.R. § 100.22(b).

In this matter, the banners in question read "Thank you Buck for H.R. 5471! – No Mega Mining in Soledad Canyon." They do not contain language comparable to the illustrative phrases contained in 100.22(a). Nor do they "in effect" contain an explicit directive to take electoral action. *FEC v. Massachusetts Citizens for Life,* 479 U.S. 238, 249 (1986) ("MCFL"); *see also FEC v. Christian Coalition,* 52 F. Supp. 2d 45, 62 (D.D C 1999) ("*Christian Coalition*").[2] Indeed, they make no reference at all to an election. The banners also do not qualify as express advocacy under 100.22(b). Again, they contain no explicit electoral portion whatsoever, let alone one that is "unmistakable, unambiguous, and suggestive of only one meaning." The banners can easily be read as the City asserts—as messages advocating passage of the legislation and thanking Rep.

[2] In *MCFL*, the Supreme Court found that a newsletter that set out the positions of the candidates, highlighting and identifying those candidates whose pro-life views were consistent with those of MCFL, and then urged voters to "VOTE PRO-LIFE!" provided "in effect an explicit directive" to vote for the candidates favored by MCFL, and hence, contained express advocacy In *Christian Coalition,* a district court found that a mailing that identified Newt Gingrich as a "Christian Coalition 100 percenter" and encouraged the reader to "take [an enclosed Congressional scorecard] to the voting booth," in effect explicitly told the reader to vote for Gingrich, and therefore constituted an express advocacy communication

McKeon for its introduction. Thus, it cannot be said that the banners could only be interpreted by a reasonable person as containing advocacy of the election or defeat of Rep. McKeon. *See* 11 C.F.R. § 100.22(b).

B. The Banners were not Coordinated Communication

Complainants in these matters alleged that the banners provided an unfair advantage to the re-election campaign of Rep. McKeon, and suggested that this "advantage" should be considered a contribution to the candidate. However, the communication would only be considered a contribution if it is a coordinated communication, pursuant to 11 C.F.R. § 109.20.

A payment for a coordinated communication is an in-kind contribution to the candidate's authorized committee with which it is coordinated and must be disclosed as an expenditure made by that candidate's authorized committee.[3] 11 C.F.R. § 109.21(b)(1). Further, in-kind coordinated contributions to federal candidates or their committees are subject to the limitations, source prohibitions, and disclosure requirements of the Act. *See, e.g*, 2 U.S.C. §§ 434(b), 441a and 441b. Because the City is a corporation, it would be prohibited from making an in-kind contribution via a coordinated communication to the candidate or his committee.[4] *See* 2 U.S.C. § 441b.

[3] The Act defines expenditures by any person "in cooperation, consultation, or concert, with, or at the request or suggestion of. a candidate, his authorized political committees or their agents" as in-kind contributions. 2 U.S.C. § 441a(a)(7)(B)(i)

[4] A municipal corporation is a "corporation" for purposes of the limitations and prohibitions of the Act Advisory Opinion 1977-32 *See also,* Advisory Opinion 1982-26 (reaffirming that a municipal corporation is a "corporation" and a "person" subject to the limitations and prohibitions of the Act)

In order to be a coordinated communication, the communication funded by the City would have to satisfy a three-pronged test: (1) payment by a third party; (2) satisfaction of one of four "content standards;[5] and (3) satisfaction of one of five "conduct" standards.[6] 11 C.F.R. § 109.21. Although the City admits that it paid for the communication, thereby satisfying the payment element of a coordinated communication, there is no indication that the content and the conduct elements may have been satisfied.

First, the communication is not an electioneering communication (a broadcast, cable or satellite communication that refers to a clearly identified candidate for Federal office) as defined by 11 C.F.R. § 100.29(a). Second, there is no available information to suggest that the candidate prepared the communication, or that the message is the republication of campaign materials. Also, as discussed above, the communication does not expressly advocate the election or defeat of the candidate, and the banners were removed on July 31, 2006, more than 90 days prior to the November 7, 2006 general election.[7] Therefore, the communication does not meet the content standards of a coordinated communication. 11 C.F.R. § 109.21(c)(1), (2), (3) and (4).

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[5] The "content" standards include: (1) an electioneering communication, as defined in 11 C.F.R. § 100.29(a); (2) a public communication that republishes, disseminates, or distributes campaign materials prepared by the candidate; (3) a communication that expressly advocates the election or defeat of a clearly identified federal candidate; and (4) certain public communications that refer to a clearly identified federal candidate, are publicly distributed or disseminated 90 days or fewer before a general election, and are directed to voters in the jurisdiction of the clearly identified candidate. 11 C.F R § 109.21(c)

[6] The conduct standards include: (1) communications made at the request or suggestion of the relevant candidate or committee; (2) communications made with the material involvement of the relevant candidate or committee; (3) communications made after substantial discussions between the person paying for the communication and the clearly identified candidate; (4) the use of a common vendor, and (5) the actions of a former employee or independent contractor 11 C.F R § 109 21(d)(1)-(5).

[7] The California primary election was held on June 6, 2006, prior to the funding and display of the banners

Finally, the conduct standard is not satisfied in this matter. There is no information to suggest that the candidate, or an agent for the candidate, suggested or requested the communication or that the candidate or an agent for the candidate was materially involved in the creation or production of this communication, or that the candidate and the City utilized common vendors. In fact, news reports quote the candidate as saying that he was not involved in the production or the display of the banners. Judy O'Rourke, *Dem Attacks City Banners—Complaint to Argue Signs Thanking McKeon for Mine Bill Illegal*, Los Angeles Daily News, July 28, 2006. Thus, because the banners are not a coordinated communication, the funding of the banners is not a contribution to the re-election campaign of Rep. McKeon.

C. Political Committee Status

The Complainant in MUR 5779 argues that because the City created, funded and displayed the banners in question, it is required to register with the FEC as a political committee pursuant to 2 U.S.C. § 433. The Act defines "political committee" as any committee, club, association or other group of persons that receives "contributions" or makes "expenditures" for the purpose of influencing a federal election which aggregate in excess of $1,000 during a calendar year. 2 U.S.C. § 431(4)(A). The Supreme Court has held that "[t]o fulfill the purposes of the Act" and avoid "reach[ing] groups engaged purely in issue discussion," only organizations whose major purpose is campaign activity can be considered political committees under the Act. *See, e.g., Buckley v. Valeo*, 424 U.S. 1, 79 (1976); *FEC v Massachusetts Citizens for Life*, 479 U.S. 238, 262 (1986).

In this matter, the banners were neither independent nor coordinated expenditures, and the major purpose of the City of Santa Clarita is manifestly not the influencing of

elections. Therefore, there is no reason to believe that the City is required to register with the FEC as a political committee, as alleged by the Complainant.

IV. CONCLUSION

Accordingly, because the banners funded by the City of Santa Clarita do not expressly advocate for the election or defeat of a clearly identified Federal candidate, there is no reason to believe that the City of Santa Clarita violated 2 U.S.C. § 441b by making an independent expenditure on behalf of a clearly identified Federal candidate. There is also no reason to believe that the City of Santa Clarita made an in-kind contribution in the form of a coordinated communication to the candidate, in violation of 2 U.S.C. § 441b. Finally, there is no reason to believe that the City of Santa Clarita violated 2 U.S.C. § 433 by failing to register as a political committee.